

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MICHAEL L. ALDEN,)
)
Petitioner,)
)
vs.) **CIVIL NO. 06-942-JPG**
)
SHERIFF KELLERMAN,)
)
Respondent.)

MEMORANDUM AND ORDER

GILBERT, District Judge:

Petitioner, a detainee in the Perry County Jail in Pinckneyville, Illinois, brings this habeas corpus action pursuant to 28 U.S.C. § 2241. This case is now before the Court for a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in United States District Courts. Rule 4 provides that upon preliminary consideration by the district court judge, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.” Rule 1(b) of those Rules gives this Court the authority to apply the rules to other habeas corpus cases. After carefully reviewing the petition in the present case, the Court concludes that petitioner is not entitled to relief and the petition must be dismissed.

In this action, Petitioner argues that he is being held in the Perry County Jail on federal charges without a valid indictment. Petitioner is a defendant in a criminal case currently pending in this district before the Honorable G. Patrick Murphy, Chief United States District Judge. *See United States v. Alden*, Case No. 4:04-cr-40043-GPM (S.D. Illinois, filed July 9, 2004). As best the

Court can determine, Petitioner believes that because a suppressed indictment was issued two days before the suppression was lifted and before he was arrested, that he is being illegally detained without an indictment. Petitioner seeks release from the illegal detention.

Petitioner filed a nearly identical action before another judge in this district, the Honorable David R. Herndon, United States District Judge, in April 2006. *See Alden v. Cundiff*, Case No. 06-cv-298-DRH (S.D. Illinois, filed April 13, 2006). That action was dismissed pursuant to Rule 4 governing Section 2254 Cases because his criminal case was still pending and the only procedural avenue at that time for challenging the indictment was within the context of the criminal case. Petitioner appealed that decision and the appeal is pending in the Seventh Circuit Court of Appeals. *See Alden v. Cundiff*, Case No. 06-2517 (7th Cir., filed May 30, 2006).

According to the criminal docket, Petitioner raised this issue in the criminal case in a motion for proof of the validity of the indictment (Doc. 815, criminal case), which the Honorable James L. Foreman denied on June 21, 2006 (Doc. 937, criminal case). The Court reiterated its denial of this motion by granting the Government's motion in limine prior to trial (Doc. 1123, criminal case) regarding the validity of the indictment (Doc. 1157, criminal case). A jury found Petitioner guilty of the charges against him on November 16, 2006, but he has not yet been sentenced.

This Court does not have the power to dismiss the indictment in a case pending before another judge in this district. At this point, Petitioner's only avenues for relief for any potential insufficiency in the indictment are to await a ruling from the Court of Appeals in *Alden v. Cundiff*, or to await sentencing so that he might raise the issue in a direct appeal of his criminal conviction in accordance with the statutes and rules governing appeals of decisions of a federal district court. After he has exhausted those remedies, Petitioner may pursue post conviction relief as described in

Title 28 of the United States Code.

In summary, this habeas action does not survive review under Rule 4. Accordingly, this action is **DISMISSED** without prejudice to Petitioner challenging the sufficiency of the indictment in a direct appeal of the pending criminal action.

IT IS SO ORDERED.

Dated: November 27, 2006

s/ J. Phil Gilbert
U. S. District Judge